

**Arizona Department of Environmental Quality UST Program
Release Reporting & Corrective Action Guidance**

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SECTION 10: ENFORCEMENT ACTIONS

The following is a summary of the various USTCA Section compliance and enforcement actions which are consistent with the ADEQ's Compliance and Enforcement Policy. **Please note: The ADEQ Compliance and Enforcement Policy does not require the issuance of a Compliance Status Letter (see Section 10.1) or a Notice of Violation (see Section 10.2) prior to issuing an Administrative Order, or seeking injunctive relief and civil penalties in Superior Court.**

10.1 COMPLIANCE STATUS LETTER

The Compliance Status Letter⁶ is an informal letter that identifies existing violations and gives the recipient thirty (30) days to provide a response. The letter requests that documentation be submitted that demonstrates that:

- The identified violation has been corrected; or
- The violation does not exist.

Failure to demonstrate the above referenced information results in the issuance of a Notice of Violation (NOV).

The letter also offers the owner and operator the opportunity to enter into a Consent Order or Judgement to avoid the issuance of a NOV.

⁶ Note that at any time within the thirty days allowed for a response to a Compliance Status Letter, or within the compliance timeframe allowed to satisfy a NOV, the owner and/or operator may submit a SAF application and work plan for preapproval in accordance with AAC R18-12-604 and R18-12-607.01(G)(2). Eligibility for SAF preapproval is contingent upon satisfaction of all SAF eligibility criteria. In accordance with ARS §49-1052, once the SAF preapproval work plan is given final approval by the ADEQ, the period of time for compliance with corrective actions associated with the preapproval begins to run from the date of preapproval of the corrective actions. Therefore, the schedule contained within the preapproved work plan constitutes the establishment of a new compliance due date for completion of the UST corrective actions required pursuant to 40 CFR 280.65 and ARS §49-1005. Failure to achieve compliance with applicable federal and state law may result in an ADEQ enforcement action against the UST owner and/or operator.

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10.2 NOTICE OF VIOLATION

The Notice of Violation (NOV)⁸ identifies the violation(s) and explains what actions must be taken to achieve compliance. It also identifies a period of time for the owner and/or operator to come into compliance, and to submit documentation of compliance.

If compliance can not be achieved within the compliance time frame, the owner and/or operator must contact the department to begin negotiating a Consent Order.

If, at the end of the compliance time frame, the owner and/or operator has not submitted documentation of compliance nor executed a Consent Order, then the department will issue a Compliance Order or pursue judicially imposed injunctive relief and civil penalties.

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10.3 CONSENT ORDER

A Consent Order is a bilateral agreement between the department and the owner and/or operator which outlines a specific schedule for achieving compliance. The compliance schedule negotiated between the department and the owner and/or operator is legally binding and enforceable by the Superior Court.

The Consent Order must be executed within the compliance time frame specified in the NOV. If at the end of the compliance time frame a Consent Order has not been entered into, then the department will issue a Compliance Order or pursue judicially imposed injunctive relief and civil penalties.

Failure to comply with the terms and conditions of a Consent Order may result in a civil action.

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10.4 COMPLIANCE ORDER

A Compliance Order is a unilateral document issued by the department requiring compliance within a specific time frame, set by the department.

The Compliance Order becomes final and enforceable by the Superior Court thirty (30) days from the date it was received, unless a hearing is requested. Any request for a hearing must be in writing and must specifically cite the portions of the Compliance Order that are being contested.

The owner and/or operator is ineligible for SAF reimbursement upon the Order becoming final and until the Order is satisfied [see A.R.S. § 49-1052(F)(3)].

Failure to comply with the terms of a Compliance Order may result in a civil action.

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10.5 CIVIL ACTIONS

A Civil Action is a civil complaint filed in Superior Court. The complaint may request injunctive relief.

The department may offer to negotiate with the owner and/or operator in order to reach a settlement. If settlement is reached, a Consent Judgement is filed in Superior Court. The Consent Judgement may contain a schedule for achieving compliance, stipulated penalties for failing to meet established deadlines, civil penalty, and any other terms agreed upon by the parties.

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10.6 CIVIL PENALTIES

An owner and/or operator who fails to comply with UST statutes and rules is subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.

If a person fails to comply with an order within the time specified in the Order, that person is subject to civil penalty not to exceed \$25,000 for each day of continued noncompliance.

An owner and/or operator who knowingly fails to notify or submits false information is subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or false information is submitted.

It should be noted that achieving compliance does not prevent the department from seeking civil penalties for the period of noncompliance.